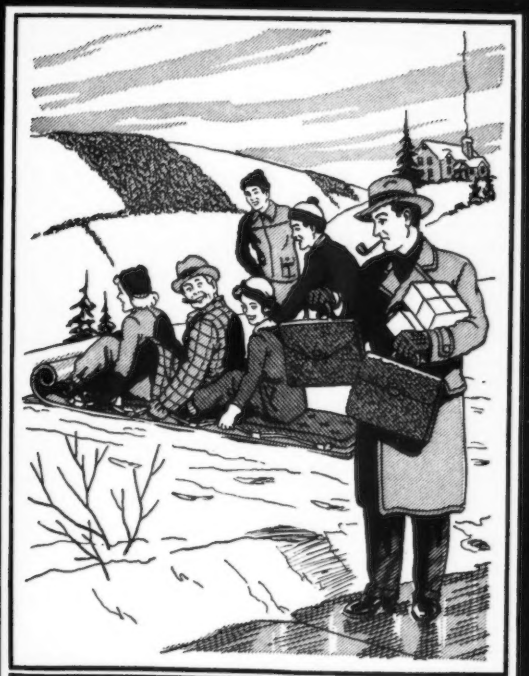
CASE AND COMMENT



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Case and Comment

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—World Wide Photos, Inc.

One of the mural panels by Boardman Robinson depicting great figures in the history of the law in the ceremonial entrance of the Justice Department building in Washington, D. C.

THE LAST REFUGE OF THE ROGUE

By WM. HEDGES ROBINSON, JR.[1]

(From July 1940 Dicta)

It had been a great treat to escape into the green coolness of the country for an all-day picnic, thought Sheriff Tom Bash peacefully as he, his wife, her friend, and a deputy were driving back to Kansas City on that hot August night. Two sharp revolver shots suddenly interrupted his peacefulness.

Bash pushed hard on the brakes. Before the car had come to a stop, the deputy, gun in hand, was running across to an alley from which the gunshots seemed to have come. Grabbing a riot gun from the rear of the car, Bash sprinted after his deputy.

Ahead of them two men were trotting down the street. An automobile swung out of the darkness. Its two occupants opened fire on the officers. The gangsters in the street joined in.

The officers, advancing, swung their riot guns into action. The gangsters' car wobbled crazily across the street and bumped to a stop against the curb—its driver and passenger dead.

One of the men in the street dodged between the houses and disappeared. The other threw his empty automatic to the ground and raised his hands.

"For God's sake, don't shoot," he pleaded. "I'm a friend of Johnny Lazia."

"I don't care whose friend you are, Charley Gargotta," replied Bash, "but I don't shoot unarmed men."

After handcuffing Gargotta, the deputy picked up the gangster's gun. Both officers examined it carefully, making mental notes by which they could identify it in court.

Gargotta was indicted for the murder of Ferris Anthon, rival gangster. Tremendous pressure began to be exerted mysteriously to bring freedom. Johnny Lazia, king of Kansas City's underworld, was alleged to be close to the political powers in that city.

In April when the state presented its case, Bash and the deputy told their story and identified the death weapon. A local ballistics expert stated that bullets found in the body of Anthon came from the identified gun. The city detective who had investigated the killing then came to the stand.

He gave some startling evidence. There was a mistake, he said. The real death weapon he had picked up between the houses where the unknown gangster had fled.

"I made out a tag for it," he testified. "I forgot to put it on. Let's see, I've got the tag somewhere. Yes, here it is."

The detective handed over a police identification tag to the amazed district attorney. Shortly afterwards a woman testified for the defense that Gargotta on that August night had been at her apartment, which was near the scene of the murder.

According to her story, Charley left the apartment a few minutes after they heard the shooting, to see what was occurring. Gargotta claimed that he was an innocent bystander. Because of this perjured alibi, a jury freed him.

This Kansas City case presented a type of alibi very frequently used. Recently I made a survey of all the reported criminal cases of the last twenty years involving an alibi. In approximately 85 per cent of those cases, alibi testimony was offered by relatives, sweethearts, or friends; and

[1] Denver, Colorado, Bar.

of that percentage, alibi testimony was given by members of the family in two-thirds of the cases. In other words, alibi testimony is supplied by witnesses related by blood or affinity to the defendant in better than 50 per cent of the criminal cases.

These figures become more significant when it is realized that under our criminal procedure the state must prove its case beyond a reasonable doubt. If the defendant's alibi raises any question as to his guilt, the jury, under its instructions, must free him. It seems a relatively simple thing for a defendant to create a doubt in the minds of the jurymen by bringing to them sworn testimony of his family or friends that he was elsewhere than at the scene of the crime. Perhaps no better illustration of this fact had been brought so forcibly to the attention of the public than the attempt which was made in the Hauptmann case.

It was essential that Hauptmann be able to establish three different alibis. A shocking array of psychopathics, convicted criminals, and dope fiends paraded to the stand to establish alibis in the closing days of that trial. But the main items of the alibis were testified to by Hauptmann and his wife. Mrs. Hauptmann swore that her husband was in Christian Fredricksen's bakery waiting for her until nine o'clock the night of the kidnapping. She also stated that her husband was at home enjoying music with friends on the evening when the ransom money was paid. These alibis were vigorously asserted by Hauptmann, who added that on the November night when the ransom bills were passed, he was many miles from the place where they were circulated. Many persons swore to similar facts. This barrage of perjury has resulted in four perjury indictments.

While the Hauptmann case was more theatrical than most criminal cases, one does not have to search long to find families deliberately falsifying testimony in an attempt to liberate some member from the law. An ex-convict by the name of Reilly robbed Arthur Heisman of his car and his companion of some valuables. The car, stripped, was found by the Chicago police in a private garage which Reilly had rented previously. In spite of the fact that Heisman, his companion, and the owner of the garage positively identified Reilly, he claimed an alibi, which, as the judge observed, was supported entirely by witnesses related to him by blood or affinity.

The gangster's "moll"—in fact, wives and sweethearts from any stratum of life—frequently establish faked alibis. One of the main parts they play in modern criminal gangs is to furnish hideouts, such as Evelyn Frechette did for Dillinger or Helen Gillis did for "Baby Face" Nelson; or to supply alibis, as Vi Mathis did for Verne Miller.

There is the case of Willie Stanley's girl, a negress living in a small southern town. A large number of state's witnesses had said that Willie Stanley had fatally stabbed Willie Sadler, who had testified against the Stanleys in a civil suit. But Willie Stanley's girl swore that he was at her place when the stabbing occurred.

The lies of friend and family frequently swear a defendant out of trouble. In a large percentage of the cases, faked documents are relied on for an alibi. This is the second favorite variation of the alibi theme. It occurred in approximately 10 per cent of the cases studied.

This type of alibi is found in three general forms: post cards or letters mailed from some far-away place on the day the crime was committed, a hotel register showing that the defendant was registered at a hotel in another city during the period in

question, and miscellaneous dated receipts, generally for garage repairs or storage, tending to prove the defendant's presence elsewhere than at the scene of the crime.

The post card alibi is a favorite trick. It was used, along with alibis supplied by relations, as one item of the defense of the Touhy gang in the Hamm kidnapping case. The defense introduced in evidence a postal card written by one of the defendants and postmarked from a western city about the time the kidnapping occurred. This post card, together with depositions of relatives and employees of the defendants claiming that the defendants were elsewhere, constituted the defense. A jury acquitted the Touhy gang for this crime, but they were promptly convicted in Chicago for the Factor kidnapping.

The government postmark apparently carries considerable weight with juries. But a jury frequently fails to realize that alibis may be arranged for in advance, and that some member of the gang, and not the defendant, might have dropped the postal card in the letter box in another city according to a prearranged plan. In fact, a legitimate commercial concern in New York will guarantee to mail letters from any part of the world.

Another frequently used form of the document alibi is a forged hotel register. A Seattle case illustrates this criminal technique. The Paulsen Building in Seattle had been robbed on July 24th by an experienced burglar. Because of the manner by which the job was accomplished, police suspected Edelstein, a noted West Coast safe-breaker. When Edelstein was arrested in San Francisco, he said he had an alibi, but refused to divulge it. To be on the safe side, however, Edelstein attempted to bribe the guards with large amounts of money and jewels to obtain his freedom.

On the day of the trial a register from a Lincoln, Nebraska, hotel was introduced in evidence, showing that Edelstein had been a guest of the hotel on July 20th and for several days thereafter. Unfortunately for Mr. Edelstein, the forgery was not a very good job, for it was apparent to the judge and the jury that some other signature had been erased before Edelstein had signed his name.

The third general form of the document alibi is forged receipts. To illustrate, while robbing a Chicago cafe on June 20th, Lenhardt killed the proprietor. During his trial, he produced a receipt dated June 20th from a garage in Cleveland. The garage proprietor testified that the work was done on the date shown on the bill. If it had not been that the district attorney had been able to locate quickly an employee who stated that the car was actually repaired the following February, a jury would probably have acquitted another murderer.

One other type of alibi defense which is fairly common depends upon faked medical records or testimony, and perhaps upon both. To illustrate, O'Connor was on trial for the robbery in October of a Louisville tobacco company pay roll. He claimed that his knee had been badly fractured in September and that he had been confined to the bed for several months. Certain medical testimony tended to substantiate this statement. O'Connor, however, overlooked the fact that a short time after the robbery he had been booked on a breach of peace charge. When an appellate court judge affirmed a sentence of conviction, he remarked dryly, "Men so crippled do not usually figure in breaches of peace."

Day after day, perjury to substantiate these various alibis occurs in our courts. Students of criminal procedure have variously estimated that perjury is present in 75 to 90 per cent of criminal cases. Indeed, certain

persons are infamous for their ability to present alibis.

Louise Gebardi, wife of "Machine Gun Jack," has been dubbed the "Blonde Alibi" by newspaper reporters in Chicago. Jack "Legs" Diamond quickly abandoned his first crude habit of murdering potential witnesses in order to perfect perjured alibis. Diamond was credited by the police with twenty murders, but New York was unable to prove even a simple case of assault against him because of faked alibis.

Criminals have learned well the advice Deputy Sheriff Nardi gave Tony Coletto. Tony, after being arrested in Cleveland, asked the deputy what to do.

"Well," said Nardi, "you'd better set up an alibi."

"What do you mean by alibi?" asked Tony.

"Why a story—telling lies," replied the deputy.

Telling lies—that is perhaps the definition that most judges in criminal courts would give. A judge who has been on the bench in Baltimore for over ten years says an alibi is so often palpably false that most judges are likely to disbelieve perfectly truthful evidence for that purpose.

What, then, is the solution to this flood of perjury? The approach toward solving the problem has been much clouded by a lot of romantic twaddle about constitutional rights and self-incriminating evidence. The solution is simple. Defendants who plan to rely on an alibi should be required to give the prosecution advance notice of the alibi.

Surprise plays an important part in the use of the alibi. After the prosecution has presented its case, there will come a dramatic succession of evidence toward the close of the defense to prove that the defendant was not at the scene of the crime, but was somewhere else. If we eliminate this surprise element and say to the defense, "It's time you played square," fewer known criminals will escape their just punishment.

So far we have placed all the protection about the criminal and none about society. We permit the defendant to know in advance exactly what the state intends to prove, and who the witnesses are. But society knows neither the defense nor the defense witnesses until they appear in court. The cases which I have cited, cases which, incidentally, are the common run of any criminal court, illustrate well the necessity of making faked alibis impossible.

A perjured alibi not only aborts justice, it also creates a popular sense of cynicism of and disrespect for the courts. What person reading of the Potter murder case is not painfully aware that our criminal procedure encourages perjury?

Hymie Martin was indicted for the murder in Cleveland of William Potter on February 3, 1931. Ohio authorities sought to extradite Martin from Pittsburgh, where he was arrested. Martin caused a habeas corpus writ to be issued for his release. At the hearing on this writ, he produced witnesses who swore that he had come into a store in Pittsburgh and paid them a bill on the night of February 3rd.

The writ was refused and Martin was sent to Ohio to stand trial for murder. At this trial, none of the Pittsburgh witnesses was produced. Instead, other witnesses swore that Martin was in Akron, Ohio, on the night of February 3rd.

Without being prepared, without any notice, a district attorney must be ready instantly to combat such bald-face lies as occurred in that case. If he fails, and the chances are that it is seldom he can succeed, a criminal has escaped the law once again.

The advance notice of alibi law is

designed to give society an equal chance. By requiring the defendant to give notice in advance of any alibi he intends to claim, the prosecution is able to check on the alibi and the witnesses just as the defense has been able to check on the indictment and the state's witnesses.

If the advance notice of alibi law had been in effect in Kansas City when the Gargotta case, mentioned at the first of this article, occurred, the verdict would undoubtedly have been vastly different. After the state trial, Gargotta was charged with possession of stolen army guns.

When the detective repeated his tale about the mistaken tagging of guns, a federal grand jury promptly indicted him for perjury, and the court sentenced him to four years in the penitentiary. Federal agents investigated the life of the woman in the case so thoroughly that she failed to appear as a witness in the federal trial. Gargotta received a five thousand dollar fine and three years in prison.

At the time, if Gargotta had been compelled to give advance notice of alibi in the state case, the district attorney would have been able to check the facts before trial. Gargotta would have been sentenced for murder, not for possession of stolen army guns.

Michigan and Ohio have had the advance notice of alibi law for a number of years. Has it proved practical there? Has perjury been reduced? Michigan reports that since the enactment of the law, alibi defenses are very few. A great increase of convictions where alibis have been offered has been noticed. Police and prosecuting officials attribute this increase to the fact that an inquiry is now permitted into the alleged alibi prior to trial, which inquiry makes possible the refutation of false alibis.

The experience in Ohio is in accord. After this act became effective, the number of alibi defenses was reduced to a minimum and the popularity of this mode of defense waned. Criminals and lawyers were impressed with the fact that an alibi defense refuted in open court is worse than no defense at all. The requirement of advance notice, moreover, took away the most valued aspect of this defense—the surprise element. With no opportunity to check on the truth or falsity of the claim, the prosecution is little able to combat this surprise attack. No longer was there a sudden popping up of witnesses to swear the defendant out of his troubles. No longer was the state thrown into confusion by the defense claiming an alibi near the close of trial.

The advance notice of alibi law has been urged for adoption of all of the states by the American Bar Association and by the Association of Grand Jurors of New York County. Prior to the 1935 session of the state legislatures, four states had this law on their statute books. Urged by the American Bar Association, state and local bar associations caused the introduction of this act into fourteen state legislatures in 1936. And at this time at least six more states have passed an advance notice of alibi defense act. Congress recently enacted such a statute. Some progress has been made, but more is essential before perjury in criminal cases will be at a minimum.

You suggest that perjury prosecutions will be the cure? Not at all. Less than one per cent of all the criminal cases in New York in one year were for perjury; yet perjury undoubtedly occurred in 75 per cent of the criminal trials. Of 300 persons charged with perjury in New York over a ten-year period, 225 were discharged, 16 acquitted, and 59 convicted, a large percentage of the convictions resulting from guilty pleas. This percentage seems to follow more

or less generally throughout the country.

The reasons why perjury is so infrequently punished is the hesitancy of judges to convict persons suspected of perjury; the apathy of prosecuting attorneys; the technicalities of the law; the refusal of grand juries to indict and of petit juries to convict; the severe but ineffective punishment provided by law.

No, indictment for perjury is not the solution to this problem. In the first place, it is much better to prevent perjury than deliberately to encourage it and then punish the offender. In the second place, as has been indicated, it is hopeless to eradicate it by prosecution. Whenever self-interest interjects itself into a case, perjury, if unrestrained, will likewise be interjected. That is the natural thing.

Eliminate the invitation to perjury by making falsification virtually impossible and perjury will, to a large extent, likewise be eliminated. No doubt that there are many cases where the alibi is sincere and honest. In that event, a defendant need have no fear. The checking of his story will inure to his benefit, either resulting in a lack of prosecution or in strengthening, not weakening, his case.

The alibi defense is moth-eaten. Dickens poked fun at it in his "Pickwick Papers." When poor Pickwick was helplessly attempting to defend suit brought by Widow Bardwell's barristers, Sam Weller, in his efforts to be helpful, suggested to Pickwick's lawyers that they have recourse to the last ditch of an "allebye." In Samuel Warren's classic novel, "Ten Thousand a Year," the benevolently fraudulent Mr. Quirk of the London law firm of Quirk, Gammon & Snap lived in a suburban mansion named Alibi House. Mark Twain has amused thousands of his readers with his broadsides at the alibi. Even judges on the bench cannot resist the temptation to joke about it.

In one of the western states during the Volstead era, an extensive bootleg outfit, with counterfeit labels of the most expensive brands of whisky was found on the defendant's place. The whisky produced, however, was made from raw alcohol, flavoring, and coloring matter. The defendant pleaded an alibi.

Said the judge: "The defendant furnished some testimony having an appearance of genuineness about equal to that of his brands of liquor, which, if accepted as genuine, would authorize a verdict of not guilty."

Is it not time to accept the recommendation of the American Bar Association and similar organizations and introduce a little genuineness into criminal evidence? The alibi defense law is not intended as a panacea for all ills of criminal law. But it will reduce perjury. It will permit the state to be prepared as well as the defense. And, most important of all, it will aid criminal procedure in recapturing the respect due it.

I HAVE *never regretted reading a first volume of Blackstone through, or not going on to the second; his frank declaration that the law was a jealous mistress and would brook no divided love, was upon reflection quite enough for one whose heart was given to a different muse.*

—WILLIAM DEAN HOWELLS.

LONG TERM EMPLOYMENT CONTRACTS IN INDUSTRY

By DR. E. CLINE and B. J. MILLER, B.S., LL.B.[1]

One of the greatest evils in our modern industrial world is the uncertainty of the employee as to the duration of his employment and the stability of his income. All the requirements of the Wagner Act and its interpretation by the National Labor Relations Board to consolidate labor relations and guarantee peace in industry through Collective Bargaining, has not done away with this handicap of American economic stability. The only visible solution of this condition is the long term employment contract. The long term contract in industry is not a new idea. It has developed to a stage so that today we are able to express certain definite principles as to its economic and legal aspects.

In constructing a so-called long term contract, it is essential as in all labor contracts that there be recognized bargaining parties, being both free in will and conscience, who will negotiate for the best interest of all concerned. This will avoid paternalistic plans as well as unilateral dictatorial agreements, which eventually will work hardship on both or either of the parties.

Further, it is important that long term contracts define not only the duration of the employment term, but all the conditions pertaining to labor in the business organization to which it applies.

The duration of the employment in long term contracts according to the plans in operation up to date has been limited to a maximum of one year. This is so, because so far, it is economically impossible for an employer to plan further than this period in setting a guaranteed wage. The yearly plan is an attempt to iron out labor's seasonal movements in industry. If success follows the effort of industry in adopting such yearly contracts as we are here discussing, far-reaching and important results to our economic structure can be expected.

Among the important results to be expected are First: It will give the worker, who is employed, a secured income with which to plan his expenditures. Because of this, the great cyclical movements in industry will be less erratic due to the greater measure of confidence instilled in those who control the purchasing power of the nation. Thus, the consumption of American industrial goods will be stabilized; a factor, which will be a great incentive for the industrialist to plan future enterprises. Second: The long term employment contract from its permanent nature produces the machinery that will automatically eradicate many minor disputes, that have in the past caused labor unrest in the form of sudden strikes and walkouts, costing American industry a tremendous amount of money, waste of technical skill and tragic psychological harm.

This peace resulting from certainty in industrial relationship in so far as the employer and employee cooperation is concerned, will make possible a guarantee of delivery of production in the filling of advanced orders. In fact all industry will be benefited by the planning that is necessary in order to make workable

[1] This thoughtful article was prepared for Case and Comment by Dr. Eugene Cline, a former practising lawyer in Czechoslovakia, and Mr. B. I. Miller, a member of the Pittsburgh, Pennsylvania, Bar.

long-term labor contracts. This planning will stabilize production as well as consumption as explained above.

American industry has long suffered from the cost of unnecessary industrial labor turnover. The effect of this high turnover in labor is a familiar stumbling block to American business management. The cost of training new men, the waste of inefficient help, the breakage, spoilage of machinery and materials, has often been the difference between profit and loss for the fiscal period. The long term contract, because it does eradicate the seasonal labor problem decreases the turnover of labor, in that many skilled workers, who would not return after the slack period, will remain in the industry. This blessing is not the least minor.

Of course, industry should not expect that the long term contract will solve all its problems. One of the major questions, which will not be entirely done away with by the long term contract, is the periodic cycles in industrial production. But since the long term agreement is dependent on budgeting and estimating future production, it is a step toward the solution of this problem.

The introduction of the long term employment contracts in industry will apparently result (in the trial period) in an increase in the surplus labor. But at the same time the stability of the employed masses will outbalance this seemingly unsavory, unexpected effect—and what is vitally important for the American Social and Labor Administration and Legislation: this new phenomena will make possible a clear picture of the extent of our unemployment problem and its eventual solutions. This solution will come about by the new industries and enterprises that will undoubtedly come into being within the new era of confidence and security in our economic system.

To the general public there is a very significant gain by the introduction of these agreements. By defining the quantity of unemployed and doing away with the part-time employed, both the state and Federal governments will be saved a great deal of administrative expense that is now being expended for supplemental relief. Much of the time, energy and cost now being spent for reinvestigation of the part-time worker will no longer be necessary. Not only that, but one of the easiest loopholes for fraud in getting relief, where relief is not deserved, will be abolished.

There are four types of long term labor employment plans in effect today in industry. The first plan, which operates in the Procter & Gamble plant, only guarantees one essential of the ideal long term contract. It is merely a guarantee of a minimum number of weeks or work within one year.

The second plan in operation exists in the Hormel Packing Company. This plan guarantees a minimum annual wage based on an estimate of annual production by a particular department whose members have voluntarily assumed the terms of the plan. The annual production is reduced to the number of hours of work necessary to fulfil this estimation. The hours are then multiplied by the hourly wages for such work. The resulting monetary figure is then divided into 52–40 hour units. This resulting figure is the weekly labor allotment for the department. It is then distributed among the workers in the department as their weekly wage.

The third type of plan in existence is the Nunn-Bush Plan, which is today operative in the Nunn-Bush Shoe Company. This plan is based on, *First:* The estimated number of working hours per year during which

the factory will operate. *Second:* The proportion of labor cost to the wholesale value of products sold. The labor cost is a percentage derived from the past experience of the Company. The estimated hours are divided by 52 weeks based on 40 hours per week. The money value of such hours of work is the guaranteed salary, adjustable during the year by the ratio of labor costs to wholesale value of the merchandise sold.

The fourth plan assures a minimum wage to the worker by allowing the worker to borrow a definite percentage of his average weekly earnings in the weeks that he is not employed. This loan is to be paid back gradually to the Company when work is again available. This is the plan that has been adopted by the General Motors Corporation.

The Legislature's first attempt to encourage long term employment contracts by legal provisions can be found in the Fair Lab. Stand. Act. This Act in the part, concerning the compensation of the so-called overtime (time in excess of 44 working hours in a week), provides that under certain circumstances, an employer can secure a long term contract with the organization of his employees, which contract would be able to exempt him from the strict provisions of the Act. As it is known the quoted Act in Sec. 7 requires the employer to pay time and a half for overtime, but in the clause (b) of the same section, allows the employer the proportionment of the working hours, according to the seasonal need as an exception from the main proviso, if he has a 2000 or 1000 hour contract with a bona fide Trade Union, recognized by the National Labor Relations Board. This exception obviously was inserted to encourage long term employment contracts in industry, and thus it tends to promote stability and security in the employer-employee relation for at least a year or half-year period—as far as working hours, wage-scale and the duration of the employment are concerned.

In several European countries to reach this relative security of employment contracts, the system of obligatory notice in termination of employer-employee relation was enacted, as an essential part of the labor law of those countries. The notice liability of the parties is, of course, a bilateral legal obligation, and has proved to be a more or less practical step toward stability of the labor relations.

As a substitute to such an authoritative intervention of the government into the contract field, we have the said proviso in our Wages & Hours Act, to make the duration of the employment in private industry more definite. By the exception in Sec. 7 (b) the Act changes substantially a very essential proviso, and therefore, if the parties want to avail themselves of its benefits, they must comply with certain conditions, tending to bar any abuse of it. The first one, as we quoted above, is that the contract assuring the exemption must be made with a bona fide trade union certified by the N.L.R.B. Such a recognition of bona fides for purposes of this Act does not necessarily establish the right of the organization so certified to be recognized as the exclusive bargaining representative of the employees of a particular employer under the provisions of the Wagner Act, for such right does not belong to the competency of this Act.

In addition to this requirement of certification of representatives of employees as bona fide, the Section further requires, that no employee shall be employed more than 1000 hours during any period of 26 consecutive weeks or 2000 hours in a year if he is employed on an annual basis.

This means in the latter case, that the employee, according to the terms of the required Collective Agreement, is guaranteed either a fixed annual wage, or continuous employment for 52 weeks. The number of hours worked is an absolute maximum in both cases, as well as 12 hours in any workday, or 56 hours in any workweek, in excess of which time limits the time and a half compensation has to be paid, even if there is in the plant a long term contract of the described nature.

As we have shown in the economic part of our study, the long term employment contracts are extremely important as far as the stability in the relation between production and consumption is concerned, but at the same time they are most significant from the standpoint of the future development of the labor law of this country. Certain employers, as we indicated before, are aware of the general advantages connected with this new factor in industrial relations, and have already established the principles, in the light of which, in connection with the legal as well as the economic needs of the different industries, the future collective-contractual relationship of the employer and employee can be built up.

A collective contract containing an annual plan will be constructed, as are generally all employment contracts, differing according to the industry, size of the plant (and what is temporarily very important) according to the nature of the relations between the two parties. If a satisfactory warranty of good faith is offered on both sides, then of course the written results of a Collective Bargain will be more general, there not being any urgent need present for a minute elaboration of details. Having this view in mind in the case of long term contracts, as far as the formal picture of the agreement is concerned, a definite suggestion cannot be made as to the detail construction of the grievance elimination apparatus, or the specific justifiable reasons of the termination of the employment relation. There must be specifically defined for every plant.

The above discussion of the long term employment-contract problem is by no means exhaustive nor did we intend that it should be. Our purpose was merely to introduce by concise suggestion the magnitude of the problem and its challenges to all concerned. It was our purpose to quickly point out a trend of thought that we believe in time will alter our economic and social life.

DANIEL WEBSTER IN PRESCOTT CASE

". . . If he be condemned, without having his offenses set forth in the manner in which they, by their constitution have prescribed, and in the manner which they, by their laws, have ordained, then not only is he condemned unjustly, but the rights of the whole people are disregarded. For the sake of the people themselves, therefore, I would resist all attempts to convict by straining the laws, or getting over their prohibitions. I hold up before him the broad shield of the constitution; if through THAT *he be pierced and fall, he will be but one sufferer in a common catastrophe."*

CRIMINAL COURT OF BALTIMORE
STATE OF MARYLAND
vs.
JAMES LONGFELLOW

Philemon B. Coulter, Assistant State's Attorney, for the State.

William E. Thomas, counsel for defendant.

EUGENE O'DUNNE, J.

I.

THIS case would not be without humor and romance, were it not for its pathos and tragedy.

The defendant was engaged in collecting and disposing of scrap iron. Among some refuse left out for junk collectors, he found what appeared to be a sawed off single barrel shotgun, with the wooden stock removed and with only a few inches of metal base projecting below the trigger. Thinking he might get more than mere junk price for it if he could lubricate it and take it apart, he wrapped it in newspaper when he disposed of his day's collection, and put away his truck.

Stopping at a saloon with the package under his arm, he got into an altercation there with someone to whom he owed a small amount. Payment was demanded. He acknowledged the debt, but claimed to have only 30 cents at that time. As he left the tavern, he was attacked by several men who set upon him. They got him down and four were on top of him in the scramble. The dismantled gun barrel (unknown to anyone) was loaded. In the scramble it was discharged. The load of bird shot took effect in the lower thigh of one passing by on the street. His leg had to be amputated half way below the hip joint. He is consigned to crutches for the rest of his life. He was unacquainted with the defendant or with any of the defendant's assailants. The indictment is for assault to kill and simple assault as to the man injured, and against the man who found the loaded gun barrel which was discharged in the scramble when he was attacked.

There is a mystery in the case with some claim of two shots, two blocks apart, and two men injured, one slightly, one seriously. Both State and defense witnesses agree that four or five men set on Longfellow and had him down. Defendant denies that two shots were fired, or that he knew the gun barrel contained any shell. Officer Roche thinks the man shot in the leg was one of those chasing defendant, who was running away and trying to get home, and that he heard two shots, and saw the first (not the one involved).

Is he guilty of assault, even assuming for the question that the defendant discharged the gun in the scuffle (not satisfactorily established in the evidence)? I think not. Guilt is not determined by the extent of the *injury* occasioned, in this case irreparable in character, but by fundamental principles of law, however technical. The verdict here must be *not guilty.*

II.

At the last open session of the Supreme Bench, December 4th, Mr. Webster Blades was arguing a case on appeal from Judge Adams, Criminal Court Part II, in which the defend-

ant was invoking the doctrine of *"res adjudicata"* as applied to a second degree murder conviction, where the defendant had been acquitted by the magistrate of assaulting a child who was accidentally hit by a bullet fired at someone else. The child later died of the injuries inflicted, and the defendant was subsequently convicted of murder in the second degree as the result of the child's death.

I had just prepared a letter to send to Mr. Blades and to each member of the Bench, to openly confess *"error of law"* on my part in a question I put to him as counsel during the argument, in which I erroneously contended that the law of assault and battery required intent to injure the *particular victim*, and that merely because of being engaged in assault *on another*, did not transfer that intent (or malice) to the *actual* victim, negligently, accidentally and unintentionally injured. I was *wholly wrong* on that legal proposition. My alibi (which neither justifies nor excuses my misconception of the law) was based on an erroneous *application* of the law that no crime of "battery" is chargeable out of injury arising from mere *negligent* operation of an automobile (short of *reckless* operation), even if one is violating an ordinance as to speed, and also, because of a confused recollection of the facts of a case I once read, where a man was engaged in separating two fighting bull dogs, and, in the use of his walking cane for that purpose, he *accidentally*, and *unintentionally* hit a passing pedestrian by whom he was later prosecuted for assault and battery. He was held to be not guilty of assault and battery, the difference lying in the *lawfulness* of his activity, where a contrary result would have been reached were he at the time guilty of *assault* on someone else.

As my question was asked of counsel in a *public* hearing, and my erroneous contention was made in a *public* trial, this may be a more appropriate form of *retraction*, than by a mere *private* letter, which I had written yesterday, when I could not have foreseen that a case of this character would arise on my docket today, and which presents the *identical* question!

This form of retraction may be but another illustration of the great Lord Ellenborough's reference to an *inferior* judge who "had a *devouring passion for the peculiar.*" It is "peculiar" (because of its *rarity*) for a judge, however inferior, to ever admit *error*. *Great* judges are seldom in error, and less seldom are *convinced* of error, and even when convinced, they have great facility for *"distinguishing the cases,"* and they have a wonderful talent for dressing up both truth and error until they look as much alike as the Doctors Guttmacher twins—both well known to Baltimoreans, but incapable of being distinguished by anyone outside the family circle. I make no such attempt at window dressing. Let my error of law be here dressed in "sackcloth and ashes," and placed in the stocks and public pillory, as a warning to those who speak too freely and with arrogant certainty, as I did, without *fresh resort* to the legal authorities! *Mea culpa! Mea culpa!*

Books are keys to wisdom's treasure;
Books are gates to lands of pleasure;
Books are paths that upward lead;
Books are friends. Come, let us read.

—EMILIE POULSSON.

CONDUCT OF AN OFFICER IN COURT

By A. D. HANNA

For some twelve years past, I have been Bailiff in department One of the Superior Court of San Bernardino County.

Since department One handles the criminal cases of this County, I have had occasion, in that period of time, to observe many witnesses, a large number of whom were officers of the law.

Being a Deputy Sheriff myself, I was naturally interested in their manner on the stand and the general impression that they made as witnesses. Strange as it may seem, they, in general, made rather poor witnesses. I began to consider why this condition prevailed, and as a result I made up a list of 22 "Don'ts," which I have handed to the various officers as they had occasion to come into Court, and which I also gave to the officer who conducts their training school.

The effect has been very noticeable and encouraging. As a practical result the officers have become much better witnesses, and have made a much better impression.

1. Don't put it on; depend on your demeanor in Court and on the witness stand.
2. Don't forget that there are always one or two on the jury who hesitate to believe an officer.
3. Don't forget that it only takes one juror to hang a jury.
4. Don't hesitate between words in order to help the reporter; you only confuse him.
5. Don't raise your hand to take oath until requested to do so by the clerk.
6. Don't be bored by the ceremony; give the clerk your undivided attention while being sworn.
7. Don't volunteer information while on the stand; the D. A. has his case prepared before going to trial.
8. Don't approach the D. A. at the counsel table; do it before the trial or at recess.
9. Don't sit behind the D. A. If he wants you he will go to you—the jury will think you are framing the defendant.
10. Don't show anxiety; be natural; jury weighs you by your actions.
11. Don't get angry; that shows your weakness.
12. Don't sit watching the D. A. while on the witness stand; give the jury a chance to see your countenance.
13. Don't walk between the counsel table and the Judge.
14. Don't fail to keep the dignity of the Court.
15. Don't burst in if you have business with the Court; go through the proper channels.
16. Don't think the case depends solely on you; there are others who are responsible also.
17. Don't let a juror talk to you while a trial is in progress; it does not look well.
18. Don't become confused; answer yes or no; you have a right to explain.
19. Don't try to impress the jury; they can tell when you are prejudiced.
20. Don't mumble; speak out in a clear tone of voice.
21. Don't confer with witnesses in the courtroom while court is in session; step into the chambers or the hall.
22. Don't feel too confident; it is best to know thyself.

THE FAMOUS OBERWEISS WILL

Contributed by D. James Hamilton, Abilene, Texas.

IN RESPONSE to the numerous requests of our readers, we are repeating the *Last Will & Testament of Herman Oberweiss* as offered for probate at the June 1934 term County Court of Anderson County, Texas, and which was previously published in the Autumn 1939 issue of CASE AND COMMENT, Volume 42, No. 3.

"I am writing of my will mineself that des lawyir want he should have to much money he ask to many answers about the family. First think i don't want my brother Oscar to get a god dam thing. I got he is a mumser and he done me out of four dollars fourteen years since.

I want it that Hilda my sister she gets the north sixtie akers of at where i am homing at now i bet she don't get that loafer husband of hers to brake twenty akers next plowing. She can't have it if she lets Oscar live on it i want i should have it back if she does.

Tell mama that six hundret dollars she has been looking for ten years is berried from the bakhouse behind about ten feet down. She better let little Fredrick do the digging and count it when he comes up.

Pastor Ticknitis can have three hundret if he kisses the book he won't preach no more dumhead talks about politics. He should a roof put on the meeting house with and the elders should the bills look at.

Mama should the rest get, but i want it so that Adolph should tell her what not she should do so no more slick irishers sell her vaken cleaner they noise like hell and a broom don't cost so much.

I want it that mine brother Adolph be my executer and i want it that the Judge should please make Adolph plenty bond put up and watch him like hell. Adolph is a good bisness man but only a dumpph would trust him with a busted pfennig.

I want dam sure the Schlaimial Oscar don't nothing get. Tell Adolph he can have a hundret dollars if he prove Judge Oscar don't get nothing: that dam sure fix Oscar.

(Signed) Herman Oberweiss.

THEY FOUND OUT

New York *Times*, April 13, 1939.

JOHN CUNLIFFE was driving his sedan from his home in Droylsden, Lancashire, England, when on the outskirts of Manchester he emerged from a crossroad into a highway along which was lumbering a loaded van owned by Hall & Pickles, Ltd., steel manufacturers of Manchester. There was a collision followed by profane language exchanged between the driver of the van and Mr. Cunliffe.

When their vocabularies had been exhausted they looked about for witnesses. They found only one, Mrs. Mary Agnes Smith, aged 49, a widow, and she had fainted. While the men were disputing as to who should revive her, a third car came along and took her away.

The damage to the sedan was slight, that to the van was nil, and a pecuniary adjustment was soon reached without hard feeling on either side, and when they met on the road again Mr. Cunliffe and the driver of the van smilingly saluted each other. They wondered what had become of the woman whose testimony neither had required. Then they found out.

The next time Mr. Cunliffe encountered the driver of the van there was a long consultation. Mr. Cunliffe had been served with a summons and so had Hall & Pickles. Mrs. Smith had sued both for damages amounting to $25,000. The shock she had suffered from witnessing the collision was worth that, her lawyer with an array of medical witnesses contended at the Manchester Assizes. The court awarded her $12,500.

NEGRO "130 YEARS OLD" JOLTS CENSUS TAKER

FORMER SLAVE WAS TOO OLD TO TAKE PART IN CIVIL WAR

New York *Times*, April 13, 1939.

A WRINKLED former Negro slave doesn't know what a jolt he gave Uncle Sam's Census Department when he announced he did not fight for the South in the Civil War because he was too old. Charles Parcansas, who said he was 130 years old, was surprised himself when reporters cornered him.

"Uncle Charlie," white-whiskered and feeble, had just come in from a walk and he sat down in the living room of the home of Mr. and Mrs. Prince Reed, where he has lived for the past eighteen years, and prepared to answer reporters' questions.

"What's in it for me?" Uncle Charlie asked.

A reporter produced a quarter, and the old Negro became expansive. He said he was born on the McElroy plantation in Dallas County, Ala., on July 14, 1810. He knows that is the date because his master, whose son was born the same month, told him so.

"Reason I live so long, I'm part Indian," Uncle Charlie said. "Indians and jackasses live longer than anybody," he added. "Do I drink? I drink whenever I can get it." He said he hadn't been able to work since January due to rheumatism and indigestion.

Uncle Charlie's story was corroborated by the Reeds, who said he had kept his dates correct since he's been with them. "I was too old to get in the Civil War," he said. "They wouldn't take anybody over 45." He said he came to Louisiana when he was 70.

"Ever been married, Uncle Charlie?" a reporter asked.

"Seventeen times," he replied. "But I haven't lived with a woman now since I was 122. I always left 'em."

BILL OF PARTICULARS WITH PRAYER OF SUPPLICATION

The following gem of satire may be found in a record of recent proceedings in the Supreme Court of Niagara County, New York. It was occasioned by that court's order that the omitted names of two merchants be furnished.

Lockport, N. Y., June 5, 1939. B. E. N.

PLAINTIFF, resigned at last to compliance with defendant's importunate but dilatory, overtechnical, arbitrary, and pusillanimous demand for what said defendant well knows

to be a mere formal statement of evidence which anticipates the trial and makes no difference anyhow, amends her laborious and already quite complete bill of particulars herein as follows:

I. 18. On April 7, 1936, to the STAR CLOTHING COMPANY of Lockport for a suit of clothing for the corpse of her dead father, paid at the request of her said brothers ____$28.00

19. From May 3, 1932, to April 7, 1936, to THE GREAT ATLANTIC & PACIFIC TEA COMPANY branch store at No. 3 Buffalo Street in Lockport, and to THE GREAT ATLANTIC & PACIFIC TEA COMPANY branch store at No. 4 Main Street in Lockport, for food to the use of her said father and mother, at not less than $6 each week, paid at the request of her said father and brothers _____$1248.00

And further she says not nor will say though she be put to rack and rope, expressing withal her deep regret that she cannot state, explain, describe, or estimate the exact kind, make, brand, size, style, fashion, form, fit, cut, or shade of color of said suit of clothing nor the precise number, measure, bulk, weight, quantity, quality, intrinsic value, market value fair or unfair, nutritive value, or sentimental value of such articles of food. But they that sought evils to her spoke vain things before the judge and studied deceits all the day long, closing their telephone to her counselor's messages and swearing falsely that her said counselor refused to reveal all things to them. See Ps. xxxvii. 13. God helping her she has done her best, and beseeches said defendant, again in the words of Holy Writ, Luke ii. 29, to dismiss her in peace lest this mighty controversy bring the heavens and the earth to a sudden and unprovided end. For the which act of mercy she still would bless him when the stars have all grown cold. In the name of justice, law, and reason. Amen.

J. H. M., attorney etc.

(Verification made by plaintiff and "Sworn to _____ this 1st day of November, the Feast of All Saints, in the year of our Lord 1938.")

COPY OF POWER OF ATTORNEY

United States of America, Indian Territory, Western Judicial District.

KNOW all men by these presents: That I Angie Lugrand, of Boley Ind. Ter., for and in consideration, of the purposes hereinafter mentioned, do assign transfer and delegate to one John Shields of Boley Ind. Ter. my rights to act for me and in my behalf, my attorney in fact and appoint him for me with the Power of Attorney and Agent.

The following conditions being considered that I, Angie Lugrand being defected with Illiteracy, from natural circumstances in life, though sound in mind and in health, I am unable to properly attend to and transact my business for myself and in my own behalf, the proper inviroments in life not having at all times presented themselves, in such light as to cure me of the incapacity of knowing how to transact for myself in a legitimate form; the true worthiness reposed, in the above mentioned party, I now hereby now delegate to the said power of attorney, for me to transfer, assign, and deliver for me, all deeds signing for me the same in my own signature, the same as I would sign myself, if able from a Physical and business capacity so to do.

The following as a tract of land, as to my right of dower and any other interests which I may have in and to the same land as here below described: The S-W-/4 of the N-E-/4

of Sec. 20 Twp. 12 N. and R SE containing in all 40 acres more or less according to the survey made for the same as above specified.

That for the further purposes of collecting any and all money for me, the same as if I were present, if need be and signing my name to a receipt for same in my behalf, the same as authorized above to the signing to other deeds of conveyance.

And I further state as a matter of inconvenience, that I am not able to write my own name, and if I was so able my sight, from an optical view is poor, and I would naturally be incapacitated, from that standpoint.

The above I freely grant of my own volition and without the coercian and pursuation on the part of any one.

Having read and had the above all read in my presence, and understand the same to be as so requested by me, I hereby sign with my mark, as such above described and set forth.

her
Angie X Lagrand.
mark

Attest to mark
Lina Parks

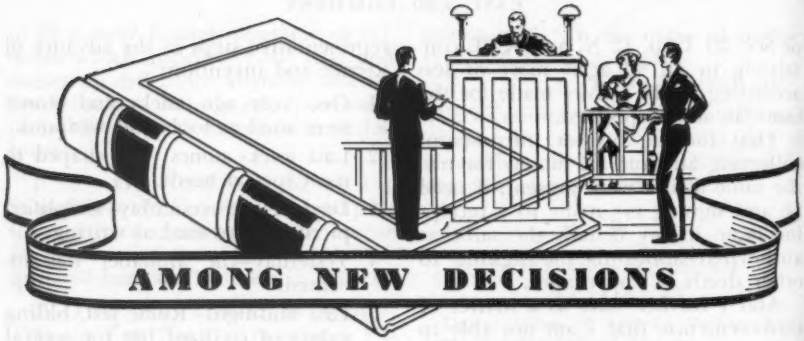
ARTHUR COMPTON'S TIME TABLE

On a time scale of one year to represent a million years of development, Dr. Arthur H. Compton shows the following, among many, representative steps in the advance of science and invention:

1. One year ago—sticks and stones were used as tools and weapons.
2. Last week—stones were shaped to meet special needs.
3. Day before yesterday—simplified pictures were used as writing.
4. Yesterday—the alphabet was invented.
5. Last midnight—Rome fell, hiding values of civilized life for several hours.
6. By 10 o'clock this morning—the first practical steamboat was being built.
7. At 11 o'clock—Faraday's law of electromagnetism was formulated.
8. By 11:30 o'clock—telegraphy, electric power, telephone, and electric lights had been invented and were in use.
9. At 11:40 o'clock—X-ray was discovered, followed quickly by radium and wireless telegraphy.
10. Fifteen minutes ago—the automobile came into use.
11. Five minutes ago—air mail was first carried.
12. One minute ago—the first world wide short-wave broadcast occurred.

Our life today differs from that of our grandfathers much more than did theirs from the life 2,000 years ago.

Abraham Lincoln *one day told a caller at the White House—"If I were to try to read, much less answer, all the attacks made on me, this shop might as well be closed for any other business. I do the very best I know how—the very best I can; and I mean to keep doing so until the end. If the end brings me out all right, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right would make no difference."*



Adjoining Landowners — *encroachment of shrubbery across boundary line.* In Smith v. Holt, 174 Va 213, 5 SE (2d) 492, 128 ALR 1217, it was held that one whose property has been invaded by the roots and branches of his neighbor's privet hedge without sensible injury other than to his lawn and flower beds is not entitled to equitable relief against such invasion, but must resort to the common-law remedy of cutting off the intruding branches and roots.

Annotation: Rights and remedies in case of encroachment of trees, shrubbery, or other vegetation across boundary line. 128 ALR 1221.

Annuities — *constitution of.* In Commonwealth of Penn. v. Beisel, — Pa —, 13 A (2d) 419, 128 ALR 978, it was held that the monthly instalments in which the beneficiary of a life insurance policy is entitled to receive, over a period of years, its proceeds with interest, pursuant to the insured's election of that mode of settlement, are not an "annuity" within the meaning of the term as used in a taxing statute.

Annotation: Provision or option for payment in instalments of amount of life insurance policy as creating "annuity." 128 ALR 981.

Bills and Notes — *finance company as innocent purchaser for value.* In Commercial Credit Co. v. Childs, — Ark —, 137 SW (2d) 260, 128 ALR 726, it was held that a finance company which had prepared and delivered to an automobile dealer forms of notes and conditional sales contracts bearing a printed form of assignment to itself, and which, on the day of the sale of a car by the dealer, took an assignment of the sales contract and purchaser's note, is to be regarded as a party to the transaction against whom the defense of fraud and misrepresentation may be made, rather than as an innocent purchaser for value before maturity.

Annotation: Finance company as holder in due course of paper which it purchases from dealer. 128 ALR 729.

Brokers — *compensation upon owner's sale at less than stipulated price.* In Murphy v. Bradley, — Ark —, 138 SW (2d) 791, 128 ALR 427, it was held that the rule that if property is placed in the hands of a broker for sale at a certain price and a sale is brought about through the broker as a procuring cause, he is entitled to commissions on the sale, even though the final negotiations are conducted through the owner, who, in order to make a sale, accepts a price less than that stipulated to the broker, is subject to an exception when the contract between the broker and his principal expressly makes the payment of commissions dependent on the ob-

taining of a certain price for the property.

Annotation: Broker's right to commission where owner sells property to customer of broker at less than stipulated price. 128 ALR 430.

Contracts — *necessity of bids to furnish electricity to city.* In Washington Fruit & Produce Co. v. City of Yakima, — Wash —, 100 P (2d) 8, 128 ALR 159, it was held that a contract between an electric company and a city, whereby the electric company obligated itself to furnish, during a stated period, for a stipulated flat rate, all street lighting service required by the city for its streets, highways, and public places, including the continued operation and maintenance of the company's lights then being used, and the extension of additional lighting service from time to time as the city should request, constitutes a "purchase of property or material" within a provision of the city charter requiring advertising for bids before entering into contracts for the purchase of property or material.

Annotation: Requirement that municipal contracts be awarded on competitive bidding as applicable to contracts for public utility (gas, electricity, and water). 128 ALR 168.

Corporations — *effect of dissolution on foreclosure of mortgage.* In Markus v. Chicago Title & Trust Co. 373 Ill 557, 27 NE (2d) 463, 128 ALR 567, it was held that the dissolution of a corporation and the lapse of the time thereafter within which an action might have been brought against it does not affect the enforceability of a mortgage given by the corporation to secure its obligation.

Annotation: Dissolution of corporation which executed mortgage, or purchased property subject to it. 128 ALR 572.

Courts — *Federal court following state law for burden of proof.* In Sampson v. Channell, 110 F (2d) 754, 128 ALR 394, it was held that a Federal court should, for the purpose of determining the incidence of the burden of proof as to contributory negligence in a negligence action, its jurisdiction over which is based on diversity of citizenship, regard the question as one of substantive law as to which it should follow the law of the state in which it sits, although by the law of such state the question is regarded as one of procedure as to which the state courts follow the law of the forum rather than the law of the state in which the cause of action arose.

Annotation: Choice of laws as regards presumption, burden of proof, and sufficiency of evidence, in actions in Federal courts since repudiation of rule of Swift v. Tyson. 128 ALR 405.

Covenants — *vendee's covenant to pay and vendor's covenant to make improvements as dependent.* In Nolan v. Lunsford, — Fla —, 196 So 193, 128 ALR 649, it was held that the covenant of a vendee under a land contract to pay the purchase price in instalments may be deemed independent of the covenant of the vendor to make certain improvements upon the entire tract of which the land sold was a part, where the covenants of payment were to be performed some few days prior to the date fixed for the completion of the improvements.

Annotation: Performance by vendor of covenant to make improvement as condition of his right to foreclose or forfeit contract. 128 ALR 656.

Damages — *obstruction of highway affording access to property.* In Anderson v. Hayes, 281 Ky 484, 136 SW (2d) 558, 128 ALR 774, it was held that where the obstruction of a highway affording access to plaintiff's land is of a temporary character, the dif-

TODAY who would walk on foot to Chicago when a few hours in an airliner would suffice? ★ It would take the lawyer, to work out his own rules of law as painstakingly as they are stated in AMERICAN JURISPRUDENCE, more time than it would take to walk around the world. ★ In the years just ahead, Americans will make use of the newer methods of transportation. These newer methods save time and insure prompt arrival. For the same reasons American lawyers are using the rules stated in AMERICAN JURISPRUDENCE as the basis for solving their legal problems. They too know that it saves time and insures prompt arrival at proper decisions.

ference in the value of the land before and after such obstruction is not the proper measure of damages.

Annotation: Measure of damages for injury to land caused by obstruction of highway. 128 ALR 780.

Damages — *personal injury and value of wife's nursing.* In Daniels v. Celeste, — Mass —, 21 NE (2d) 1, 128 ALR 682, it was held that the value of services rendered by a wife in nursing her injured husband is not an element of the damages recoverable by him for a personal injury where, by reason of the marital relation, he could not make a valid contract with his wife to pay her for the services in question, and she could not sue him to recover the value of her services.

Annotation: Damages in action for personal injuries or death as including value of care and nursing necessitated by the injury, rendered by one spouse to another or by a third person gratuitously or as a result of hospitalization insurance previously carried. 128 ALR 686.

Default Judgment — *res judicata.* In English v. English, 9 Cal (2d) 358, 70 P (2d) 625, 128 ALR 467, it was held that the doctrine of conclusiveness of judgments applies to a judgment by default with the same validity and force as to a judgment rendered upon a trial of issues, provided such judgment is regular and valid and shows distinctly on what count or cause of action it was rested; but the confession implied from the default is limited to the material issuable facts which are well pleaded in the declaration or complaint and does not apply to issues not raised in the pleadings.

Annotation: Doctrine of res judicata as applied to judgments by default. 128 ALR 472.

Divorce — *liability of father after death of mother for support of child in custody of third person.* In Barry v. Sparks, — Mass —, 27 NE (2d) 728, 128 ALR 983, it was held that a third person, awarded the custody of a child in a divorce proceeding in which the father of the child is ordered to pay a certain amount for the support of the mother and the child, need not, upon the death of the mother, apply to the divorce court for a modification of the decree, but may maintain a common-law action against the father for support furnished to the child subsequently to the mother's death.

Annotation: Death of mother of child whose custody has been awarded to her or to third person by divorce decree as reviving father's common-law duty to support, or right to custody of, child. 128 ALR 989.

Estoppel — *by recitals in mortgage.* In Alexander v. Wilson, 124 Tex 392, 77 SW (2d) 873, 128 ALR 412, it was held that where the facts known to a mortgagee at the time of taking a mortgage containing a declaration that the mortgaged land is not homestead property, and those of which he is required to take notice, are consistent with the declared intention of the mortgagors, their declaration may estop them from asserting their homestead claim.

Annotation: Recital in deed or mortgage disclaiming homestead as respects property described or affirming homestead in other property. 128 ALR 414.

Evidence — *negligence causing other accidents.* In Robitaille v. Netoco Community Theatres, — Mass —, 25 NE (2d) 749, 128 ALR 592, it was held that the admissibility in a personal injury action of evidence of injury to others at other times by the same thing which caused the plaintiff's injury, for the purpose of showing that thing to be dangerous, depends upon substantial identity in the alleged defective conditions, and upon whether

the danger of unfairness, confusion, or undue expenditure of time in the trial of collateral issues reasonably seems small to the trial judge.

Annotation: Admissibility on issue of defendant's negligence in respect of condition of place where plaintiff was injured, of evidence of prior accidents or injuries at same place. 128 ALR 595.

Evidence — *rebuttal of presumption of legitimacy.* In Re Jones, — Vt —, 8 A (2d) 631, 128 ALR 704, it was held that where the legitimacy of a child born in wedlock is in issue, the party asserting nonaccess of the husband has the burden of proving such fact; and the degree of proof required is that the fact be established beyond a reasonable doubt.

Annotation: Degree of proof necessary to overcome presumption of legitimacy. 128 ALR 713.

Evidence — *relevancy of pecuniary condition of one negligently killed.* In Wray v. Ferris, — Okla —, 103 P (2d) 942, 128 ALR 1079, it was held that defendants in an action for wrongful death brought for the benefit of the dependents of deceased may not show ownership of property by deceased in order to reduce the amount of the recovery.

Annotation: Admissibility in action for death of evidence as to pecuniary condition of deceased. 128 ALR 1084.

Executors and Administrators — *counsel fees in attempt to defeat will.* In Re Jolly, — Wash —, 101 P (2d) 995, 128 ALR 993, it was held that an executor named in a will which has been admitted to probate should, even if unsuccessful in resisting the probate of an alleged later will, be reimbursed out of the estate for counsel fees and expenses if it appears that he acted in good faith.

Annotation: Right to allowance out of estate of attorneys' fees incurred in attempt to establish or defeat will. 128 ALR 1002.

Executors and Administrators — *purchase of claim against estate.* In Loewenstein v. Watts, 134 Tex 660, 137 SW (2d) 2, 128 ALR 910, it was held that a transaction by which a bank, which is coadministrator of a decedent's estate, pays notes owed by the estate, under an order of court authorizing the administrators to borrow money from the bank for this purpose, and, as security for a note of the estate executed to it in a like amount, takes over the original notes and the lien securing them, is a purchase of a claim against the estate, rather than a loan to the estate, so as to come within a statute, if otherwise within its terms, directed against the purchase by an administrator of claims against the estate.

Annotation: Purchase by executor, administrator, or trustee of claims against estate or trust. 128 ALR 917.

Executors and Administrators — *Succession taxes, liability for.* In Re Powell, — Mont —, 101 P (2d) 54, 128 ALR 116, it was held that an executor or administrator is not liable, either personally or in his representative capacity, for an inheritance tax in respect of property which he has never possessed or been in a position to reduce to possession, passing to persons having no other interest in the estate out of which the tax might be paid, as in the case of payments made under an annuity contract with the decedent directly to persons designated by him, who have no other interest in the decedent's estate, where, though the inheritance tax statute declares that the executor or administrator of a decedent's estate, as well as the recipients of the decedent's property, shall be personally liable for the tax until its payment, and shall

not be entitled to a final accounting unless he shall produce a receipt or file a bond for the payment of the tax, and empowers an executor or administrator to sell property of the estate to pay the tax in the same manner as he might sell for the payment of the decedent's debts, the tax is not one upon the property of the decedent, but upon the privilege of acquiring property by will or inheritance, and the individual beneficiary is personally liable therefor, and the context indicates that the tax is payable by an executor or administrator only out of property passing to the person taxed.

Annotation: Personal liability of executor, administrator, or trustee for succession tax. 128 ALR 123.

Extended Insurance — *assessment plan.* In Department of Insurance of Indiana v. Church Members Relief Asso. — Ind —, 26 NE (2d) 51, 128 ALR 635, it was held that a life insurance company operating under the assessment plan, whose policies provide for the payment, in addition to periodical premium payments of specified amounts, of "subsequent amounts required under this policy," and for the collection of additional amounts where necessary to maintain legal reserves for the payment of obligations, and whose management is authorized by statute to fix the duration of the risks to be assumed by the company, may lawfully incorporate in its policies a provision for extended insurance beyond the period for which the premium is paid, but in such case the right to collect additional amounts as premium must be deemed to continue during the full extended life of the policy.

Annotation: Validity of provisions for extended or paid-up insurance loan and surrender value or endowment provisions in life policies with assessment feature. 128 ALR 639.

Food — *civil liability in sale violating pure food law.* In Donaldson v. Great Atlantic & Pacific Tea Co. 186 Ga 870, 199 SE 213, 128 ALR 456, it was held that the present case is before this court on questions certified by the court of appeals. It is an action to recover damages for injuries sustained by the use of an article of food sold by the defendant as a dealer in groceries and meats.

In such an action for damages, where under the pleadings and the evidence it is made to appear that the defendant violated the pure food statute in that the food sold to the plaintiff was adulterated within the meaning of that law, it is not essential to a recovery that the defendant should be shown to have had knowledge of the impurity of the food or to have been wanting in ordinary care, in the sense of negligence as a matter of fact, in connection with its sale. The fourth and last question is answered in the negative.

Annotation: Knowledge or actual negligence on part of seller which is not an element of criminal offense under penal statute relating to sale of unfit food or other commodity, as condition of civil action in tort in which violation of the statute is relied upon as negligence per se or evidence of negligence. 128 ALR 464.

Guaranty of Mortgage — *measure of liability.* In Walton v. Washington County Hospital Asso. — Md —, 13 A (2d) 627, 128 ALR 970, it was held that the measure of liability of a guarantor of a mortgage on property which is bid in by the mortgagee on foreclosure is determined by the amount of the deficiency after the foreclosure, and is not limited to the mortgagee's ultimate loss, determined by such amount as may be realized by him on a resale of the property.

Annotation: Price obtained at foreclosure sale as affecting liability

of guarantor of mortgage debt. 128 ALR 975.

Income Taxes — *deductions and taxes on property purchased by taxpayer.* In Commissioner of Internal Revenue v. Coward, 110 F (2d) 725, 128 ALR 764, it was held that a purchaser of real property who pays a tax thereon for which the seller is not personally liable, which the purchaser has not contracted with the seller to pay, and which at the time of the sale was not yet payable and had not become a lien upon property, is entitled, under the provision of the Federal income tax law authorizing the deduction from gross income of "taxes paid or accrued within the taxable year," to deduct from gross income the amount paid, save to the extent to which a state statute makes the seller liable to the purchaser for such portion of the current year's taxes paid as is represented for the fraction of the calendar year preceding the sale; and this although, by reason of assessment of the property to the seller prior to the date of sale, the tax had, in an accounting sense, "accrued" to the seller.

Annotation: Income Tax: Deductibility of taxes on property sold or purchased by taxpayer. 128 ALR 769.

Incompetent Persons — *removal of guardian.* In McBride v. McBride, — Fla —, 195 So 602, 128 ALR 531, it was held that the conduct of the guardian of an incompetent person in leaving funds of his ward on deposit for an unreasonable time in a bank the financial condition of which he was, as a stockholder and director, in a position to know, instead of investing such funds as directed by law, whereby they were lost through failure of the bank, is ground for his removal, particularly where he has also failed to comply with the requirements of a statute requiring guardians of incompetent veterans to file certified copies of their annual accountings as therein directed, and such failure is declared by statute to be ground for removal.

Annotation: Improper handling of funds, investments, or assets as ground for removal of guardian of infant or incompetent. 128 ALR 535.

Insurance — *of title.* In Metropolitan Life Insurance Co. v. Union Trust Co. of Rochester, 283 NY 33, 27 NE (2d) 225, 128 ALR 370, it was held that title insurance against "defects in, encumbrances upon, or liens or charges against the title" of mortgagors does not cover the subsequent levying of an assessment on account of improvements made prior to the issuance of the policy which when levied became a lien having priority over the mortgage of the insured.

Annotation: What amounts to charge, encumbrance, or lien within contemplation of title insurance policy. 128 ALR 373.

Insurance — *options and double indemnity.* In Hay v. Conn. Mutual Life Insurance Co. — Tenn —, 138 SW (2d) 413, 128 ALR 548, it was held that a provision of a life insurance policy for its automatic extension upon default in the payment of premiums likewise operates to extend an attached agreement to pay, in consideration of an additional premium, a double indemnity in case the death of the insured results from bodily injury effected solely through external, violent, and accidental means, where the extension clause does not exclude the double indemnity benefit and the agreement for the double benefit does not specify that it shall be void or inoperative if the policy is continued in force solely by virtue of the extension clause, and this notwithstanding the agreement for double indemnity provides that failure to pay any premium or instalment thereof as provided in the

policy, or the termination of the policy prior to the receipt of proof of accidental death, will terminate the agreement and all liability of the insurer thereunder.

Annotation: Applicability of option provisions to double indemnity and disability features of life or accident insurance. 128 ALR 552.

Insurance — *rider circumscribing insurer's liability.* In Automobile Underwriters v. Camp, — Ind —, 27 NE (2d) 370, 28 NE (2d) 68, 128 ALR 1024, it was held that riders circumscribing the liability of an insurer, which are pasted on the face of the policy contemporaneously with its execution and remain so attached at the time of its delivery to the insured, constitute a part of the policy even though they are not signed by the insurer, where the riders themselves provide that they are part of the policy, and they were obviously so intended by the parties.

Annotation: Unsigned riders or slips physically attached to policy, or unsigned indorsements on policy, as part of insurance contract. 128 ALR 1034.

Judgment — *foreclosure of tax lien upon service of publication.* In Harris v. Barnes, — Neb —, 291 NW 721, 128 ALR 111, it was held that a decree of foreclosure of a tax lien against unknown owners of land, rendered upon service by publication against unknown owners and the land itself, is of no effect as against the persons who were at the time in actual possession of and farming the land, and who were not made parties defendant in the action and had no notice or knowledge thereof.

Annotation: Persons in possession of real property as affected by decree foreclosing tax lien, upon service by publication, or in a proceeding against unknown owners. 128 ALR 114.

Judgment — *res judicata — decree that landowner has fully paid drainage district assessments.* In Kersh Lake Drainage District of Jefferson v. Johnson, 309 US 485, 84 L ed 881, 60 S Ct 640, 128 ALR 386, it was held that a decree in a landowner's suit against a drainage district and its commissioners to establish that he has fully paid the share of benefit taxes apportioned to his land and is, therefore, entitled to have his land declared free from any further drainage tax liability may be given effect as res judicata in a suit to collect a tax levied for the benefit of holders of the district's outstanding certificates of indebtedness, without depriving the certificate holders of their property without due process of law, although they were not made parties to and had no notice of the suit to establish the landowner's freedom from further tax liability, where statutes in existence when the certificates were issued, with notice of which certificate owners were charged, and by which they were bound, provided for such suit with no requirement of notice to the creditors of the district, and the commissioners of the district are charged by law with the duties of protecting and enforcing creditors' rights on obligations issued by the district.

Annotation: Judgment in action between property owner and public improvement district or its officer as res judicata as against certificate holders who were not parties. 128 ALR 392.

Landlord and Tenant — *provision for acceleration of rent.* In Gentry v. Recreation, 192 SC 429, 7 SE (2d) 63, 128 ALR 743, it was held that a provision in a lease for an acceleration of future instalments of rent on a certain contingency does not authorize the lessor, upon the happening of the contingency, to distrain for such future instalments.

Annotation: Validity and effect of acceleration clause in lease or bailment. 128 ALR 750.

License — *dry cleaning and dyeing.* In State v. Harris, 216 NC 746, 6 SE (2d) 854, 128 ALR 658, it was held that a statute imposing a license fee for the privilege of carrying on the business of dry cleaning, dyeing, or pressing clothing or other fabric, from the operation of which certain counties are excluded, violates a constitutional requirement that the power of taxation shall be exercised "in a just and equitable manner."

Annotation: Public regulation of dry cleaning and dyeing establishments. 128 ALR 678.

Life Tenants — *repairs and improvements.* In Evans v. Ockershausen, 69 App DC 285, 100 F (2d) 695, 128 ALR 177, it was held that the cost of electric refrigerators installed by a trustee in an apartment house, being fixtures and necessary to the proper management and maintenance of the trust property, is chargeable against the corpus, rather than the income, of the trust.

Annotation: Rights and duties of life tenant and remainderman (income and corpus) with respect to repairs and improvements. 128 ALR 199.

Limitation of Acts — *certificate of deposit.* In Dean v. Iowa-Des Moines National Bank & Trust Co. — Iowa —, 290 NW 664, 128 ALR 137, it was held that the statute of limitations does not begin to run in favor of a bank on a negotiable certificate of deposit payable on its return properly indorsed, until its presentment for payment, notwithstanding the provisions of the Negotiable Instruments Law that "presentment for payment is not necessary in order to charge the person primarily liable" on a negotiable instrument.

Annotation: Statute of limitations as applied to certificate of deposit. 128 ALR 157.

Marriage — *annulment jurisdiction.* In Bell v. Bell, — W Va —, 8 SE (2d) 183, 128 ALR 56, it was held that under Code, 48–1–17, read in conjunction with Code, 48–2–1, the courts of this state lack jurisdiction of a proceeding to annul a marriage contracted in another state when the couple involved has not, subsequent to the performance of the marriage ceremony, resided in this state, cohabiting as man and wife.

Annotation: Jurisdiction, as between different states, of suit to annul marriage. 128 ALR 61.

Mines — *validity as affected by zoning.* In Dolan v. Stockburger, 14 Cal (2d) 313, 94 P (2d) 33, 128 ALR 83, it was held that an oil and gas lease is not void for want of consideration, so as to enable the lessee to recover the amount paid the lessor, because the zoning of the property at the time of the lease as residential made it unlawful to drill thereon for oil and gas, where the zoning ordinance permits application to be made for the reclassification of property.

Annotation: Validity of lease or other contract which contemplates or provides for acts by a party that at the time of the contract would be contrary to zoning regulations. 128 ALR 87.

Mortgage — *resale of property after redemption from foreclosure sale, by grantee of mortgagor.* In Fletcher Avenue Saving & Loan Asso. v. Zeller, — Ind —, 27 NE (2d) 351, 128 ALR 793, it was held that property redeemed by one to whom the mortgagor conveyed it after sale on foreclosure, but within the redemption period from the foreclosure sale at which it was purchased for less than the amount due under the mortgage,

may again be sold under the decree to satisfy the balance due thereunder, where a statute provides that the effect of a redemption, by the owner or one claiming under him, of realty sold to satisfy a judgment is to vacate the sale as to the property redeemed and to leave it "subject to sale on execution as if such sale had not been made."

Annotation: Rights and remedies of mortgagee where mortgaged property is bid in on foreclosure at less than mortgage debt and it is redeemed by mortgagor or latter's grantee. 128 ALR 796.

Municipal Corporations — *license from Federal Power Commission to construct hydroelectric plant.* In McGuinn v. City of High Point, — NC —, 8 SE (2d) 462, 128 ALR 608, it was held that a municipality to which a license is granted by the Federal Power Commission to construct a hydroelectric plant on a stream alleged to be navigable exceeds its authority in agreeing to abide by terms and conditions in the license, under which the commission is to have control over the construction and operation of the plant and which otherwise places the plant under the complete domination and control of the commission, making the purpose of the municipality to secure electric power for distribution among its inhabitants subordinate to purposes of national concern in the promotion of navigation and in the protection of fish life in the stream.

Annotation: Power of municipality to agree to abide by conditions or regulations imposed by Federal authority in respect of construction, maintenance, or operation of a municipal public utility plant or enterprise. 128 ALR 620.

Negligence — *building inspector of premises as invitee.* In Howland v. Morris, — Fla —, 196 So 472, 128 ALR 1013, it was held that a city building inspector is, as respects the duty owed him by a contractor constructing a building the electrical installation in which he is engaged in inspecting, an invitee rather than a mere licensee.

Annotation: Duty and liability of owner or occupant of premises to building inspector upon premises in discharge of his duty. 128 ALR 1021.

Opticians and Optometrists — *practice by corporation through licensed employees.* In Silver v. Lansburgh & Brother, — App DC —, 111 F (2d) 518, 128 ALR 582, it was held that a corporation may lawfully engage in the practice of optometry through licensed employees, where the optometry licensing act neither requires nor contemplates that an optometrist shall be a graduate physician, or that he shall diagnose or treat diseases of the eye, since in such case the practice of optometry involves no such personal relationship of trust and confidence as exists between physician and patient.

Annotation: Right of corporation or individual, not himself licensed, to practice optometry through licensed employee. 128 ALR 585.

Parties — *intervention of attorney.* In Dodd v. Reese, — Ind —, 24 NE (2d) 995, 128 ALR 574, it was held that an attorney, whose alleged fraud and conspiracy in procuring a decree and order of adoption by a person since deceased is the ground of a proceeding to set them aside, should be permitted to intervene as a defendant in the proceeding in order to refute the charges against him and protect his reputation, and should not be limited to appearing by grace as amicus curiæ, the only defendant in the proceeding being the adopted person, who originally admitted, but afterward denied, the allegations of fact

upon which the charges against the attorney were predicated.

Annotation: Right of attorney to intervene in an action or proceeding so that he may refute or deny charges of fraud or other professional misconduct relating to the matter involved. 128 ALR 581.

Receivers — *priority of receiver's compensation over claim for wages.* In Parks v. Central Door & Lumber Co. — Or —, 102 P (2d) 706, 128 ALR 375, it was held that the compensation of a receiver is an item of taxable costs, and as such is entitled to priority over claims for wages of the receiver's employees.

Annotation: Priority as between receiver's fees and wages earned during receivership. 128 ALR 385.

Restraints of Trade and Monopolies — *Sherman Act and applicability to seizure by labor organization of factory making goods sold in interstate commerce.* In Apex Hosiery Co. v. Leader, 310 US 469, 84 L ed 1311, 60 S Ct 982, 128 ALR 1044, it was held that a restraint on the movement of goods in interstate commerce resulting from a sit-down strike to enforce a labor union's demands for a closed shop by compelling a shutdown of the employer's factory is not the kind of restraint of trade or commerce at which the Sherman Anti-trust Act is aimed, even though a natural and probable consequence of the acts of the strikers was to prevent substantial interstate shipments by the employer.

Annotation: Interference with operation of plant producing goods destined for shipment out of state as restraint of trade or commerce among states within inhibition of the Sherman Anti-trust Act. 128 ALR 1075.

Taxes — *interest in oil and gas produced reserved to lessor of oil and gas lease.* In State of Texas v. Quintana Petroleum Co. — Tex —, 133 SW (2d) 112, 134 SW (2d) 1016, 128 ALR 843, it was held that the reservation to the lessor of an oil and gas lease for the purpose of drilling, mining for, and producing oil, gas, and other minerals, with the added provision that in case of any discovery there is reserved to the grantor a fractional share of any oil, gas, or other mineral produced from the land until the proceeds of the sale thereof by the lessor shall aggregate a certain sum, is an interest in land, taxable as such against the lessor as owner, and does not operate merely to create a lien to secure the payment of the sum named.

Annotation: General property tax in respect of royalties and other interests (apart from interest of lessee) under oil and gas lease. 128 ALR 851.

Telegraphs — *messages, limitation of liability, liquidated damages or maximum limit.* In Western Union Telegraph Co. v. Nester, 309 US 582, 84 L ed 960, 60 S Ct 769, 128 ALR 628, it was held that the provision of the standard money order contract of the Western Union Telegraph Company that "in any event, the company shall not be liable for damages for delay, nonpayment or underpayment of this money order, whether by reason of negligence on the part of its agents or servants or otherwise, beyond the sum of five hundred dollars, at which amount the right to have this money order promptly and correctly transmitted and promptly and fully paid is hereby valued, unless a greater value is stated in writing on the face of the application and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent thereof," constitutes a stipulation of the maximum amount of damages recoverable in case of failure of the company to

transmit and pay a money order as contracted for, and does not constitute a stipulation for liquidated damages so as to entitle the sender to the recovery of $500 without proof of actual damages.

Annotation: Provision in telegraph or carrier's contract regarding amount of recovery or damages as provision for liquidated damages (or valuation of right) or a mere limitation of liability. 128 ALR 632.

Trusts — *extent of power to amend.* In State Street Trust Co. v. Crocker, — Mass —, 28 NE (2d) 5, 128 ALR 1166, it was held that no intention on the part of the creator of a trust for the benefit of the settlor, his widow, and his issue, for a period of considerable duration, during which readjustments might be desirable, to restrict to a single exercise as to the disposition of the same property the power of amendment reserved by him to such of the originally designated beneficiaries as should be living at the time of amendment, acting unanimously, is found in the phrase "at any time" in a provision that "any of the trusts hereinbefore contained may at any time be amended" in manner specified, since the words "at any time" do not necessarily mean at any one time, but may be interpreted as equivalent to "from time to time."

Annotation: Construction and application of provision in trust instrument relating to amendment or modification. 128 ALR 1173.

Trusts — *investments at beneficiary's request.* In re Miller, 333 Pa 116, 3 A (2d) 370, 128 ALR 1, it was held that an adult sui generis beneficiary of a spendthrift trust with full knowledge of the facts and of his rights, may, in the absence of fraud, be estopped from questioning the propriety of an investment of the trust funds which he has requested the trustee to make.

Annotation: Effect of beneficiary's consent to, acquiescence in, or ratification of, improper investments or loans (including failure to invest) by trustee or other fiduciary. 128 ALR 4.

Wills — *contest by creditor of heir.* In Re Duffy, — Iowa —, 292 NW 165, 128 ALR 943, it was held that a judgment creditor of one who, in the absence of a will, would inherit a share of a decedent's realty has, where his judgment would be a lien on any real estate inherited by the debtor, such an interest as entitles him to contest the validity of a will.

Annotation: Right of creditor of heir to contest will. 128 ALR 963.

Wills — *designation of particular property in residuary clause.* In Henderson v. First National Bank of Rome, 189 Ga 175, 5 SE (2d) 636, 128 ALR 816, it was held that where described property is particularly designated in a will, even though the designation be in a residuary clause, it will be treated as a specific devise to the named legatee, if it is clear from the will that the testator intended a segregation of this particular property apart from his other estate being devised for the benefit of this named legatee.

Annotation: Effect of designation of particular property in residuary clause of a will. 128 ALR 822.

Wills — *effect of partial intestacy.* In Re Stephan, — Fla —, 194 So 343, 128 ALR 440, it was held that the fact that a testator gave his widow a life estate only in all his property will not preclude her from taking, under the statute of descents, the reversion except so far as disposed of by the will.

Annotation: Devise of life estate without complete or effective disposition of remainder as negativing right of life tenant to take as heir or next of kin. 128 ALR 446.

Wills – *remainder as vested or contingent.* In Wyman v. Kinney, – Vt –, 10 A (2d) 191, 128 ALR 298, it was held that the remainder given to the daughters of a testatrix by a will by which she gave all her property to her husband for life, and "after his decease" to her three daughters, "or their heirs," is contingent on their survival of the termination of the precedent estate.

Annotation: Vested or contingent character of remainder under devise of a remainder to a certain person or persons "or" his or their heirs or other class. 128 ALR 306.

Wills – *substitutional gift.* In Re Hoermann, – Wis –, 290 NW 608, 128 ALR 89, it was held that the words "unto him and his heirs and assigns forever" in a testamentary disposition are, even in the case of personal property, presumed to have been used to limit the estate rather than to provide a substitutional gift.

Annotation: Devise or bequest to one "or his heirs" or one "and his heirs" as affected by death of person named before death of testator. 128 ALR 94.

Zoning – *spot zoning.* In Higbee v. Chicago, Burlington & Quincy R. Co. – Wis –, 292 NW 320, 128 ALR 734, it was held that "spot zoning" is the arbitrary devotion of small areas within a district to a use which is inconsistent with the use to which the district is restricted; but a use which is different without being inconsistent is not "spot zoning."

Annotation: Zoning: Small area within limits of jone, in which are permitted uses different from or inconsistent with those permitted in the larger area ("spot zoning"). 128 ALR 740.

THE HUMOROUS SIDE

Natural. An Irishman, whose name is not material, brought suit for damages against his employer. The employee, while performing his duties, had been kicked by one of the animals belonging to the employer.

"Were you careful in attending the animal?" asked the defending counsel.

"Yes, sir," replied the witness.

"And you didn't prod him on the legs with the fork?"

"No, sir."

"Or excite him in any way?"

"No, sir."

"Then, sir," asked the lawyer, "what reason can you give for his having kicked you?"

"Because he was a mule, sir," responded the witness.

At That. A policeman appeared against a man he had arrested for fast driving.

"How fast was he going?" asked the judge.

"Pretty fast," answered the policeman.

"As fast as a man can run?"

"Yis, your honor, he was going as fast as two min can run."

Thoughtful of Him. "Did ye get damages fer being in that automobile accident, Bill?"

"Sure; fifty dollars for me and fifty fer the missus."

"The missus? I didn't hear she was hurt."

"She wasn't; but I had the presence o'mind to fetch her one on the head with me foot."—*Harper's Weekly.*

Tactful Eloquence. A certain rather impulsive and hasty spoken lawyer was defending a man before a jury in an assault case, wherein the defendant had severely beaten his prosecutor. The defense was that he had extreme provocation in that the latter had vilely abused and insulted the accused in a manner no manly person could endure. The eloquent advacate concluded: "Now, gentlemen, let me say that my client was resenting a gross insult. You, Mr. O'Brien (pointing to an Irish juror), suppose I had some words with you and called you a d— dirty Irish blackguard; wouldn't you resent it? And you, sir (addressing an extremely baldheaded juror), suppose I shook my fist in your face and called you a dirty old bald-headed blackguard; wouldn't you try to whip me? And you, Mr. Wagner (pointing to a German sitting next), suppose I had called you a fat old Dutch blackguard; wouldn't you knock me down? In short, gentlemen, suppose I were to quarrel with any one of you and were to call you the particular kind of a blackguard that you are, wouldn't you assert your manhood and thrash me soundly? Of course you would."—*Exchange.*

Perfect Legal Proof. "John, I've lost our marriage certificate."

"Oh, never mind; any of those receipted millinery bills will prove the ceremony."

The Other Way Round. In a bus accident in New England an Irishman was badly hurt. The next day a lawyer called on him and asked if he intended to sue the company for damages.

"Damages?" said Pat, looking feebly over his bandages. "Sure, I have thim already. I'd loike to sue the railway for repairs, sor, av ye'll take the case."

—*Youth's Companion.*

All of the Truth, at Least. Fifty years ago there lived in Woodstock, N. H., a man by the name of Thomas Booise, who was noted for his ready wit.

At one time he was called as a witness on a case in court in Plymouth, N. H. After the lawyers had fired all sorts of questions

at him without getting much satisfaction, the judge took him in hand.

"Mr. Booise," said the judge, "have you told the whole truth in this matter?"

"Yes, sir; yes, sir, I have, and I guess just a little mite more."—*Boston Herald*.

He Dodged. It is said of a noted Virginia judge that in a pinch he always came out ahead. An incident of his childhood might go to prove this.

"Well, Benny," said his father, when the lad had been going to school about a month, "what did you learn to-day?"

"About the mouse, father."

"Spell mouse," his father asked.

After a little pause Benny answered, "Father, I don't believe it was a mouse after all; it was a rat."—*Exchange*.

Title Deed.

I, J. Henry Shaw, the grantor herein,
Who lives at Beardstown, Cass County, within,
For seven hundred dollars, to me paid today,
To Charles E. Wyman do sell and convey
Lot two (2) in block forty (40), said county and town,
Where Illinois River flows placidly down,
And warrant the title forever and aye,
Waiving homestead and mansion, to both a good-bye,
And pledging this deed is valid in law,
I add here my signature, J. Henry Shaw.

(Seal) Dated July 25, 1881.

I, Sylvester Emmons, who live at Beardstown,
A justice of peace and fame and renown,
Of the County of Cass and Illinois State
Do certify here that on this same date,
One J. Henry Shaw to me did make known
That the deed above and name were his own;
And he stated he sealed and delivered the same
Voluntarily, freely, and never would claim
His homestead therein; but left all alone,
Turned his face to the street and his back to his home.

S. Emmons, J. P.

(Seal) Dated August 1, 1881.

Right at That. An amusing thing took place in Washington in connection with the Supreme Court several years ago. There was a young man in the court room who was talking out loud, making a little confusion, and one of the old bailiffs there went in and led him out and said: "Young man, you want to come out and be still. That is the Supreme Court of the United States in there! If they get after you, nobody in the world could help you! Nobody could help you—except the Almighty—and the chances are He won't interfere!"

A Logical Deduction. A decision once rendered by a justice of the peace illustrates beautifully the wisdom of selecting as a judge a person who has never wasted his valuable time in burning the midnight oil while pursuing his studies of elementary law.

Plaintiff, a saloon keeper who conducted what is commonly known as a wine-room in connection with his saloon, sued a young man, a minor, on account, for beer and whisky furnished him therein from time to time. The defendant pleaded "infancy," but admitted the purchases. The judge, to the great surprise of defendant's counsel, rendered the following opinion:

"The defendant admits the contract and relies only on a plea of infancy. The law is well settled that an infant may contract for necessaries. All medical authorities agree that whisky is a medicine and that beer is food, and medicine and food are necessaries. Therefore, the defendant's plea in this case is bad. Let judgment go for the plaintiff."

An Indian Writ. Some of the Indians were at times given minor offices such as constables and justices of the peace, with jurisdiction over their own people. The following warrant directed to an Indian constable was issued by one of these native magistrates. For sententious brevity it is in striking contrast with our modern writ:

"I, Hihoudi, you Peter Waterman,—Jeremy Wicket, quick you take him, fast you hold him, straight you bring him before me, Hihoudi."

Legal Plea for Her Hand. The judge's daughter was perturbed.

"Papa," she said, knitting her pretty brow, "I am in doubt as to whether I have kept to the proper form of procedure. In law one can err in so many little technicalities

that I am ever fearful. Now, last evening, George—"

The judge looked at her so sharply over his glasses that she involuntarily paused.

"I thought you had sent him about his business," he said.

"I did hand down an adverse decision," she answered, "and he declared that he would appeal. However, I convinced him that I was the court of last resort in a case like that, and that no appeal would lie from my decision."

"Possibly the court was assuming a little more power than rightfully belongs to it," said the judge, thoughtfully; "but let that pass. What did he do then?"

"He filed a petition for a rehearing."

"The usual course," said the judge, "but it is usually nothing but a mere formality."

"So I thought," returned the girl, "and I was prepared to deny it without argument, but the facts set forth in his petition were sufficient to make me hesitate and wonder whether his case had really been properly presented at the first trial."

"Upon what grounds did he make the application?" asked the judge, scowling.

"Well," she replied, blushing a little, "you see he proposed by letter, and his contention was that the case was of that peculiar character that cannot be properly presented by briefs, but demands oral arguments. The fact that the latter had been omitted, he held, should be held an error, and the point was such a novel one that I consented to hear the whole case again. Do you think—"

"I think," said the judge, "that the court favors the plaintiff."—*Exchange.*

Mistrusted. "I used to know Mr. Sneeker, who was with your firm. I understand he is a tried and trusted employee—"

"He was trusted, yes, and he'll be tried, too, if we're so fortunate as to catch him."

—*Exchange.*

A Strong Line. Judge: With what instrument or article did your wife inflict those wounds on your face and head?

Micky: Wid a motty, yer Honor.

Judge: A what?

Micky: A motty—wan av thim frames wid "God Bliss Our Home" in it.

Shocking. "I am sorry," he said to the conveyancer as he laid a deed on the desk, "but my wife won't stand for this." "Why not? It's all right. We compared the description with great care and we have been over the whole deed and it is in the usual form."

"Well," said the client, "there isn't but one letter wrong that I know of, but you just look at that acknowledgment clause."

It read as the conveyancer rapidly ran through it, "Then personally appeared the above named Mary Jones and acknowledged the foregoing instrument to be her free act and deed." Then he read it a second time and found to his horror that the typewriter had struck a "k" instead of an "m" in writing the word "named."

Practically Everything Happened to Him. The following copy of a letter written by R. E. Wilson, Second-Class Seaman, U. S. N., was received recently by Capt. A. T. Mann, Jr., vice president Intertype Corporation, and is reproduced here for any readers who may think that everything happens to them:

From: R. E. Wilson, S2c, U. S. Navy.
To: Commanding Officer.
Via: Division Officer, 1st Division.
Subject: Overleave, reason for.

On September 7 I left the ship for ten days' leave at my brother's farm in Cobblerock, Ark.

On September 10 my brother's barn burned down, all except the brick silo, which was damaged at the top by the bolt of lightning which started the fire.

On September 11 he decided to repair the silo right away, because he had to get his corn in it. I was going to help him.

I rigged a barrel hoist to the top of the silo, so that the necessary bricks could be hoisted to where the repair work was going on. Then we hauled up several hundred bricks. This later turned out to be too many.

After my brother got all the brick work repaired, there was still a lot of brick at the top of the silo on the working platform we had built. I said I would take it all down below. So I climbed down the ladder and hauled the barrel all the way up. Then I secured the line with a slip knot, so I could undo it easier later.

Then I climbed back up the ladder and piled bricks into the barrel until it was full.

I climbed back down the ladder. Then I untied the line to get the brick down. However, I found the barrel of brick heavi-

er than I was, and when the barrel started down, I started up. I thought of letting go, but by that time I was so far up I thought it would be much safer to hang on.

Halfway up, the barrel hit me on the shoulder, but I still hung on.

I was going pretty fast at the top and bumped my head. My fingers also got pinched in the pulley block. However, at the same time the barrel hit the ground and the bottom fell out of it, letting all the brick out.

I was then heavier than the barrel and started down again. I got burned on the leg by the other rope as I went down, until I met the barrel again, which went by faster than before and took the skin off my shins.

I guess I landed pretty hard on the pile of bricks, because at that time I lost my presence of mind and let go of the line and the barrel came down and hit me squarely on the head.

The doctor wouldn't let me start back to the ship until September 16, which made me two days overleave, which I don't think is too much under the circumstances.

—*Who's Who in the Composing Room,*
(Oct.–Nov. 1940)

Service. A lady asked her attorney to write a letter to be signed by her in which she claimed some small damages to her automobile inflicted by a negligent man, driver of another car. A few days afterwards he received the following note from her:

"Our letter was promptly answered in the form of a big blue-eyed blonde man from the insurance company. Thanks."

Contributor: E. M. Overshiner,
Abilene, Texas.

Word Play. "Upper or lower berth," inquired the would-be traveler, "what's the difference?"

"Well," replied the ticket agent, "the difference is two dollars. But that is not all. The lower is higher than the upper one. The higher price is for the lower. If you want it lower, you have to go higher. We sell the upper lower than the lower. Most people don't like the upper, although it's lower on account of being higher. When you occupy an upper you go up to bed and get down to get up."—*Wall Street Journal.*

That's Something. Employer (to newly-hired typist): "Now I hope you thoroughly understand the importance of punctuation?"

Stenographer: "Oh, yes, indeed. I always get to work on time."—*Exchange.*

Consistent. "That lawyer is the most absent-minded chap I ever met," remarked a clubman to a fellow member.

"What's he been doing now?" inquired the other.

"Why, this morning he thought he'd left his watch at home, and then took it out to see if he had time to go back and get it."

"That isn't as bad," said the second man, reminiscently, "as the time when he left his office and put out a card saying he'd be back at 3 o'clock. Finding he'd forgotten something, he went back to his office, read the notice on the door, and sat down on the stairs to wait until 3 o'clock."

—*Exchange.*

Simple Arithmetic. At a business convention, an anti-advertising speaker spied Charles C. Parlin, then head of the Curtis Publishing Co's commercial research, in his audience. The speaker held up a copy of the *Saturday Evening Post,* opened it to an advertising page, and said:

"Mr. Parlin, will you stand up and tell the audience how much the advertiser paid for this page?"

"Gladly," said Mr. Parlin. "The advertiser paid one-fourth of a cent. We furnished the paper, did the printing, paid the postage, and gave our assurance of believability —all for one-fourth of a cent."

But that wasn't what the speaker wanted. How much had the advertiser paid for the *whole* advertisement?

"Oh," said Mr. Parlin, "you want to know how much he paid for 3,000,000 pages like that? He paid 3,000,000 times one-fourth of a cent."—*The Open Book.*

Legislative Wit. Election years are always productive of a profusion of political anecdotes, and 1940 is no exception. The latest made its appearance in a recent issue of *Your Life* and concerns an obnoxious member of the Ohio legislature who, for lack of facts, fell back on Henry Clay's famous line:

"I'd rather be right than President!" he declaimed.

"Don't worry," retorted an opponent, "you'll never be either!"

"But, say," added a voice from a far corner, "how about being half-right? And Vice President?"—*The Open Book.*

Behind the Files. These four contributions are the mental meanderings of a legal secretary.

1. Finis is a Good Idea:

"Tenements" mean something queer,
Just what I guess I'll never hear.
"Hereditaments," it seems,
Something most important means.
And then "Appurtenances" I find;
I wish that this fool thing were signed!

2. John Doe:

There's a lawyer extra nice—
He gives such very good advice;
Never can he be accused
Of giving any that's been used!

3. Without Malice:

I wonder how the elephant—
That unsung dignitary,
Does all of his remembering
Without a secretary!

4. What I mean!

Of all those words which I like most to hear—
"IN WITNESS WHEREOF" are to me most dear!

By Marguerite Pendergrass,
1035 Pacific Building,
Portland, Oregon.

Non-respectability. In preparing a lease of a lot on which the lessees agreed to construct a building, the lawyer dictated to his stenographer as follows:

"The lessor shall have the right to enter upon the said premises and to post thereon a notice of non-responsibility. . . ."

When it was typed the above dictation appeared as follows:

"The lessor shall have the right to enter upon the said premises and to post thereon a notice of non-respectability. . . ."

Contributor: Martin M. Levering,
Los Angeles, Calif.

Doubt. We are justly proud of our jury system, but the twelve "good men and true" are not always the wisest of mankind. At a recent session a prisoner was indicted for pocket-picking, and to most people in court the clearest possible case was made out by the prosecution.

"Have you anything you would like to tell the jury before they retire?" said the judge.

"Well, all I wanter say is, I hopes as 'ow they'll give me the benefit of the doubt," replied the prisoner, despondently.

The jury considered their verdict; they were no little time over it.

"Can I assist you in any way, gentlemen?" said the judge, at last becoming impatient.

"We are almost agreed, me lud," said the foreman, "but we can't quite understand what the doubt is the prisoner wishes us to give him the benefit of."

Sent to Prison. A painter was called upon to give evidence for the plaintiff. Counsel for the defendant tries to bully him.

"Your name is John Dobbs?"

"Yes."

"Are you the same John Dobbs who was sentenced to eight days' imprisonment for using bad language?"

"No."

"Are you the same John Dobbs who was sentenced to a couple of years' hard labor for theft?"

"No, that wasn't me, either."

"Then you have never been in prison?"

"Yes, twice."

"Ah!" and how long the first time?"

"One whole afternoon."

"What!—and the second time?"

"Only one hour."

"And pray, what offense had you committed to deserve so small a punishment?"

"I was sent to prison to whitewash a cell."

Hard Terms. The village problem had been stealing coal all winter. The owner finally got tired of it.

"Look here," said Niles, "I can't stand this. You've been stealing coal from me all winter. Why don't you steal some from these other fellows?"

He was told usual hard luck story, no work, family hungry, cold and starving, besides the other coal yards were too far away.

"Well, now look here," said the owner, "I don't like to put you in jail, but you ought to be there, and I'll make this proposition to you. If you'll agree to leave my coal alone the rest of this winter, I'll send you over a cart load in the morning."

The pilferer was not be outdone. He scratched his head and said:

"Look here, I don't intend to be bound up in any of your ironclad contracts, but if you'll make it two, it's a go."

He got the coal.

for

Princeton University,
The Library,
Princeton,N.J.

A.L.R. TREATS TIMELY SUBJECTS

- In volume 129 A.L.R. there appears th timely annotation:

  "SELECTIVE TRAINING AND SERVICE ACT

- In volume 130 A.L.R. there will appear a annotation on

  "SOLDIERS AND SAILORS CIVIL RELIEF ACT

Both of these annotations will contain a complete text and index the current Acts treated together with all helpful authority fro previous similar Acts which will aid in the interpretations of th important laws.

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